

### § 17.103

both within and outside the designated channel;

*Wake* means all changes in the vertical height of the water's surface caused by the passage of a water vehicle, including a vessel's bow wave, stern wave, and propeller wash, or a combination thereof;

*Waterborne activity* includes, but is not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredging and filling operations;

*Water vehicle, watercraft, and vessel* include, but are not limited to, boats (whether powered by engine, wind, or other means), ships (whether powered by engine, wind, or other means), barges, surfboards, personal watercraft, water skis, or any other device or mechanism the primary or an incidental purpose of which is locomotion on, or across, or underneath the surface of the water.

[44 FR 60964, Oct. 22, 1979, as amended at 67 FR 693, Jan. 7, 2002]

### § 17.103 Establishment of protection areas.

The Director may, by regulation issued in accordance with 5 U.S.C. 553 and 43 CFR part 14, establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. Any regulation establishing a manatee protection area shall state the following information:

(a) Whether the area is to be a manatee sanctuary or refuge.

(1) If the area is to be a manatee sanctuary, the regulation shall state that all waterborne activities are prohibited.

(2) If the area is to be a manatee refuge, the regulation shall state which, if any, waterborne activities are prohibited, and it shall state the applicable restrictions, if any, on permitted waterborne activities.

(b) A description of the area sufficient enough so that its location and dimensions can be readily ascertained without resort to means other than published maps, natural or man-made physical reference points, and posted signs.

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(c) Whether the designation is to remain in effect year-round, and if not, the time of year it is to remain in effect.

### § 17.104 Prohibitions.

Except as provided in § 17.105,

(a) *Manatee sanctuary*. It is unlawful for any person to engage in any waterborne activity within a manatee sanctuary.

(b) *Manatee refuge*. It is unlawful for any person within a particular manatee refuge to engage in any waterborne activity which has been specifically prohibited within that refuge, or to engage in any waterborne activity in a manner contrary to that permitted by regulation within that area. Any take of manatees under the Acts (see § 18.3 of this chapter for a definition of "take" in regard to marine mammals), including take by harassment, is prohibited wherever it may occur.

(c) *State law*. It is unlawful for any person to engage in any waterborne activity prohibited by, or to engage in any waterborne activity in a manner contrary to that permitted by, any State law or regulation the primary purpose of which is the protection of manatees: *Provided*: that such State law or regulation has been issued as part of a program which is determined to be in accordance with the Endangered Species Act of 1973, pursuant to section 6(c) of that Act (16 U.S.C. 1535(c)) or has been approved as consistent with the Marine Mammal Protection Act of 1972 in accordance with section 109 of that Act (16 U.S.C. 1379) and 50 CFR 18.53.<sup>1</sup>

[44 FR 60964, Oct. 22, 1979, as amended at 77 FR 15631, Mar. 16, 2012]

### § 17.105 Permits and exceptions.

(a) The Director may issue permits allowing the permittee to engage in any activity otherwise prohibited by this subpart. Such permits shall be issued in accordance with the provisions of § 17.22 of this part. Such permits shall be issued only for scientific purposes or for the enhancement of

<sup>1</sup>EDITORIAL NOTE: Section 18.53 was removed at 48 FR 22456, May 18, 1983. See the note at part 18, subpart F.